

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

BRENDAN KELLY,

Plaintiff,

v.

**LIBERTY INSURANCE CORPORATION
D/B/A LIBERTY MUTUAL,**

Defendant.

CIVIL ACTION NO. 15-CV-00234-JL

**JOINT STATUS REPORT AND PROPOSED PROCEDURAL PLAN
PURSUANT TO THE COURT’S ORDER OF AUGUST 2, 2017**

Pursuant to the Court’s Order of August 2, 2017, Plaintiff Brendan Kelly and Defendant Liberty Insurance Corporation (“Liberty”) hereby jointly submit this status report setting forth the status of discovery and a proposed procedural plan to resolve the issue of the authority of Lisa Duetsch to decline uninsured/underinsured (“UM”) coverage on behalf of Plum Creek Timber Company (“Plum Creek”).

1. On August 2 and 3, 2017, the depositions of third-party witnesses Michael Day and David Brown took place as scheduled.

2. Following these depositions, counsel for the parties conferred and agreed to a Joint Stipulation of Facts and Exhibits to substitute for the deposition and trial testimony of third-party witnesses, Kent Jones and Lisa Duetsch. As a result, the depositions of Mr. Jones and Ms. Duetsch, which were scheduled to take place in Montana on August 15 and 17, respectively, were cancelled.

3. At present, the parties agree that based on the Court’s rulings on summary

judgment, the only factual issue remaining to be resolved is whether Plum Creek employee Lisa Duetsch had authority to execute a rejection of UM coverage on Plum Creek's behalf.

4. At present, the parties agree that neither will seek further discovery on this issue. In addition, neither will seek to file further dispositive motions or renewals of previous dispositive motions. Accordingly, the parties believe this case is ready for trial.

5. The parties propose the following procedural plan:

a. The parties respectfully request that the Court set a date for a trial to resolve the remaining factual issue in the case: Lisa Deutsch's authority under New Hampshire agency law to decline UM coverage.

b. At present, the parties anticipate being in a position to submit a jointly stipulated record for the purpose of a trial on this remaining factual issue in the case.

This record will consist of the following:

- i. The parties' joint stipulation of facts and exhibits to substitute for the deposition and trial testimony of third-party witnesses, Kent Jones and Lisa Duetsch;
- ii. The full deposition transcripts and exhibits for the witnesses David Brown and Michael Day;
- iii. All exhibits, affidavits and other documents affixed to all pretrial pleadings; and
- iv. All documents produced from Liberty's underwriting file during discovery and a related stipulation regarding that file.

c. Fourteen (14) days prior to the trial date, the parties will submit to the Court a compilation of the above-described documents constituting the jointly-stipulated

trial record. On that date, each party will also submit Proposed Findings of Fact and Rulings of Law.

d. Where all evidence will be jointly submitted by the parties, the parties expect the trial to consist solely of the parties' arguments on the issue of Lisa Duetsch's authority to reject UM coverage on behalf of Plum Creek. The parties will need at most two (2) hours to present their positions.

e. In light of the parties' proposed procedural plan, the parties do not believe that Final Pretrial Statements or a Final Pretrial Conference under Local Rules 16.2 and 16.3 are necessary, but the parties defer to the Court on this issue.

Respectfully Submitted,

BRENDAN KELLY

By his attorneys,
THE STEIN LAW FIRM, PLLC

/s/ Robert Stein

Robert A. Stein, Esq.
NH Bar #2438
PO Box 2159
Concord, NH 03302
603 228-1109
rstein@steinlawpllc.com

Diane Perin Hock
NH Bar #1999
PO Box 2159
Concord, NH 03302-2159
603 288-1109
dphock@comcast.net

LIBERTY INSURANCE CORPORATION

By its attorneys,

/s/ Lavinia M. Weizel

Nancy D. Adams, Esq. (admitted *pro hac vice*)
Lavinia M. Weizel, Esq. (NH Bar #265351)
Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo, PC
One Financial Center
Boston, MA 02111
Telephone: (617) 542-6000
Fax: (617) 542-2241
nadams@mintz.com

John B. Schulte, Esquire (NH Bar #9376)
Law Offices of John B. Schulte
Two Bedford Farms Drive, Suite 202
Bedford, NH 03110
Telephone: (603) 623-8413
Fax: (603) 623-8517
Johnb.schulte@libertymutual.com

Dated: September 1, 2017

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2017, I electronically filed the foregoing document with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to counsel of record for the parties.

/s/ Lavinia M. Weizel

71644099v.1